

From: Richard Koerner [rjkoerner@inet.net.au]
Sent: Tuesday, 19 July 2011 3:06 PM
To: Cath Barker
Subject: Predatory pricing practices in SEQ
Attachments: CMCresponse1.pdf; CMCresponse2.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

This email contains an attachment that may be work related and must be filed into the DMS. If you need assistance with the Executive Officer at xo@qca.org.au.

Attn. Ms. Cath Barker

Dear Ms Barker,

A message was left for you today regarding issues raised in the following correspondence with the Productivity Commission.

Kind regards,

Richard Koerner

----- Original Message -----

Subject:Fwd: Further information relating to Submissions #7, and #25

Date:Mon, 18 Jul 2011 15:50:12 +1000

From:Richard Koerner <rjkoerner@inet.net.au>

To:urbanwater@pc.gov.au

Commissioners Urban Water Sector Inquiry

Attn. Mr. Rick Baker

Dear Commissioner Mundy,

I refer to information provided to the Inquiry on 5 July (copied below) and information relating to the December 2007 report to the Queensland Government of KPMG sent 26 June.

Further correspondence recently received from the Queensland Crime and Misconduct Commission (CMC) is provided for consideration. It relates to activities of the Queensland Competition Authority and effectiveness of official misconduct investigations relating to predatory pricing in the SEQ water sector by the CMC as an independent agency on behalf of service consumers.

I would appreciate the Inquiry's acknowledgement of these correspondence attachments and other supporting correspondence from the Queensland Water Commission that has already been supplied electronically.

Thank you,

Richard Koerner

----- Original Message -----

Subject:Further information relating to Submissions #7 and #25

Date:Tue, 05 Jul 2011 15:54:04 +1000

From:Richard Koerner <rjkoerner@iinet.net.au>

To:urbanwater@pc.gov.au

Commissioners Urban Water Sector Inquiry
Attn. Mr. Rick Baker

Dear Sir/Madam,

I refer to e-mails sent to the Inquiry 26 and 22 June and the clarification request made to the Queensland Water Commission (QWC) copied below.

Please note that no response regarding the \$246.4 asset revaluation cited below has been obtained to date other than the misleading information in correspondence dated 17 June that is attached. QWC is unable to provide details of July 2008 legacy regulatory asset valuations determined by the Minister for Natural Resources for bulk water assets transferred from SEQ councils despite its role as SEQ Water Market Rules Administrator.

I have also been informed that the Queensland Bulk Water Supply Authority has not been declared a Government Monopoly Business Activity (GMBA) by the Queensland Government. However assets making up the SEQ Water Grid were transferred from Council owned commercial business entities that are declared GMBAs. Failure to declare GMBA status and the lack of response from QWC demonstrates ongoing predatory pricing that is in breach of NWI Pricing Principles by the Queensland Government.

Kind regards,

Richard Koerner

Clarification request to QWC sent 7 June:

Thank you for this response regarding information supplied on 11 May.

Could the Water Commission please confirm that the revaluation of \$246.4 million appearing in Note 18 page 68 of the 2009/10 Financial Report of Queensland Bulk Water Supply Authority complies with the ODV methodology for determination of fair values according to QCA's Statement of Regulatory Pricing Principles (December 2000) page 33 Figure 6.1.

Thank you etc.

The attached PDF document may not be searchable by our Document Management System. Please contact Jason at [jason](#)

CRIME AND MISCONDUCT COMMISSION



GPO Box 3123
Brisbane Qld 4001

Level 2, North Tower
515 St Pauls Terrace
Fortitude Valley, Qld

Tel: (07) 3360 6060
Fax: (07) 3360 6333

Toll Free:
1800 061 611

Email
mailbox@cmc.qld.gov.au

www.cmc.qld.gov.au

Your Reference: NA
Our Reference: MI-11-1508 / DBJONES
Contact Officer: Dylan Jones

14 July 2011

PRIVATE & PERSONAL

Mr Richard Koerner
rjkoerner@iinet.net.au

Dear Mr Koerner

RE: YOUR CONCERNS

I refer to your emails of 10 and 12 July 2011 to the Crime and Misconduct Commission (CMC) regarding your concerns about appointments within the South East Queensland (SEQ) water sector.

We refer to our letter to you of 7 July and our further telephone discussions of 8 July 2011 in which we outlined our reasons for not taking any action in relation to this matter. Nothing that you have raised in your recent correspondence causes us to alter that earlier decision.

In your email you refer to correspondence you intend to supply to the CMC that demonstrates misconduct 'at the highest levels of the Queensland Government relating to failure to adopt of NWI(National Water Initiatives) reform agreements with the Federal Government in SEQ'.

Before referring any further correspondence to the CMC please consider the advice we gave to you on 8 July 2011 regarding the CMC's jurisdiction and what would amount to official misconduct under the *Crime and Misconduct Act 2001*(the Act).

Regarding your attached letter of 11 November 2010 addressed to the 2011 Biennial Assessment, please note the CMC's advice to you in a letters dated 7 June and 8 August 2008 (CMC matter MI-06-1131 refers), as then treasurer of the Coolum Beach Progress and Ratepayers Association (the Association).

As these matters have been considered and closed, the CMC does not intend to take any further action in relation to those concerns.

Regarding correspondence referred by the Queensland Competition Authority (QCA) to the CMC as per its obligations under the Act, I understand the QCA advised you of what was sent.

For your information, the QCA initially provided a summary of your concerns. The QCA then forwarded the following to the CMC:

1. Letter dated 31 January 2005 from Mr Peter Brown of the Association to Mr Peter Dajcz of the Queensland Audit Office;
2. Letter dated 11 August 2005 from the Public Accounts Committee to Mr Brown;
3. Letter dated 6 June 2011 from Ms Gayle Leaver of the Queensland Water Commission to you;
4. Letter dated 17 June 2011 from Ms Karen Waldman of the Queensland Water Commission to you; and
5. Email of 6 July 2011 from you to Cath Barker of the QCA, which included supporting emails to other bodies.

Finally, I note the comment in your email of 12 July 2011 that the Queensland Ombudsman would have documentary evidence relating to improper manipulation of regulatory assets by government agencies.

As the CMC does not intend to take any further action in relation to your concerns, we will not be requesting this information from the Ombudsman.

Under the Act, the Ombudsman has a statutory obligation to report to the CMC any evidence gathered in the course of dealing with the matter that supports a suspicion of official misconduct.

We understand the Ombudsman has considered the matter and has not, to this time, made any referral to the CMC. You may wish to discuss your concerns with the Ombudsman.

We acknowledge this matter remains of concern to you.

We note your concerns have been included in submissions to various State and Federal Government Departments and we are of the opinion these Departments are a more appropriate forum to deal with your concerns.

We regret, that based on our understanding of your concerns, we are not able to be of any further assistance to you.

Yours sincerely



JEFFREY FARRAH
Acting Principal Legal Officer
Public Sector Program
Integrity Services



CRIME AND MISCONDUCT COMMISSION

GPO Box 3123
Brisbane Qld 4001

Level 2, North Tower
515 St Pauls Terrace
Fortitude Valley, Qld

Tel: (07) 3360 6060
Fax: (07) 3360 6333

Toll Free:
1800 061 611

Email
mailbox@cmc.qld.gov.au

www.cmc.qld.gov.au

Your Reference: NA
Our Reference: MI-11-1508 / DBJONES
Contact Officer: Dylan Jones



7 July 2011

PRIVATE & PERSONAL

Mr Richard Koerner
rjkoerner@iinet.net.au

Dear Mr Koerner

RE: YOUR CONCERNS

We refer to your correspondence to the Queensland Competition Authority in which you raised concerns about impropriety in appointments in the South East Queensland water sector. The Queensland Competition Authority referred your concerns to the Crime and Misconduct Commission (CMC).

We have carefully considered the information you provided to the Queensland Competition Authority.

We note your concerns relate to a report by KPMG to the Queensland Government into pricing of water assets.

We understand you allege impropriety in appointments due to Ministers appointing the Queensland Chairman of KPMG as the Chairman of SEQ Water and a former employee of KPMG as Chairman of the SEQ Water Audit Committee.

Though I may have used different words to describe your concerns or not referred to every issue that you raised, please be assured that we have considered all the information you gave us.

Under the *Crime and Misconduct Act 2001* (the Act), the CMC's role is to ensure that complaints involving suspected 'official misconduct' in Queensland's public sector agencies are dealt with effectively and appropriately.

Attached, for your information, are excerpts from the Act that define the term 'official misconduct' and outline the role of the CMC.

In making a decision about the way to deal with a complaint, the CMC must consider the circumstances of the case and the 'misconduct principles' set out in section 34 of the Act. In particular the CMC has regard to the devolution principle, which recognises the responsibility of a chief executive officer and senior managers to manage their agency, including dealing with inappropriate behaviour of staff. It provides that action to deal with official misconduct should, generally, be taken by the agency.

The Act also recognises that in certain circumstances the CMC can decide not to take any action in relation to a complaint.

The CMC considers it is appropriate not to take any further action in relation to your allegation because there is *insufficient* evidence to support a *criminal offence* or *disciplinary breach* to warrant the dismissal of any officer.

If you have any further evidence to support your allegation that there was impropriety in Ministerial appointments in the South East Queensland water sector you may forward that to the CMC for consideration.

Yours sincerely



JEFFREY FARRAH
Principal Legal Officer
Public Sector Program
Integrity Services

Attach.

6 January 2008

Mr Robert Needham
Chairperson
Crime and Misconduct Commission (CMC)
GPO Box 3123, Brisbane Qld. 4001

Dear Mr Needham,

Re: Prices oversight complaint of 13 April 2006 (Refs MI-06-1131)

I refer to your letter of 12 December 2007 in response to the Association's request dated 4 December for a Client Services Review of the CMC's treatment of the complaint of 13 April 2006. In that correspondence it is stated that *"While you have suggested that the Council and the MWS may have provided Treasury with misleading information, the information available to us does not reasonably raise a suspicion of misconduct in that regard."*

In the letter to the Association dated 19 November 2007, the Director Complaints Services stated the following: *"We further note that the Queensland Treasury has also advised the Association that its review of Maroochy Water Services' financial performance was completed in early 2007. The CMC has not been advised by Queensland Treasury of any possible official misconduct concerns arising from the review"*. It is surprising that the letter from the Treasurer dated 16 November, that was an attachment to the CRA's letter to CMC dated 4 December cited above, was silent on the matter of completion of the updated financial performance review completed by Treasury.

Although Treasury has advised that external auditors concluded the 30 June 2003 revaluation of MWS assets was fair and reasonable, that revaluation was not significant relative to the grossly overstated estimates of regulatory capital base quoted by the Ministers in their letter to the Association dated 25 September 2004 (Ref TRO-06280). As the attached letter to the Under-Treasurer shows, average annual returns on regulatory assets have been in fact greater than 20% for the years 1999/00 to 2004/05. More than double the level considered reasonable.

Given Treasury's central role in providing flawed advice to the Minister's QCA that was used in the letter of 25 September 2004 and as the basis for the decision of the Ministers QCA of June 2005, our members do not consider that the advice quoted by the Director Complaints Services is independent. It is the view of the Association that acceptance of such advice without independent verification of possible official misconduct by any of the parties involved, including Treasury, cannot be relied upon. Further, information supplied by the Ombudsman suggests that complaints involving Ministers and Cabinet can't be dealt with.

It appears then that this complaint cannot be investigated by the Ombudsman, as has been suggested by the Director Complaints Services in letters dated 7 June and 8 August 2006, and 19 November 2007. If that is the case, the public interest of residents and ratepayers of Maroochy Shire has not been well served by the CMC in this instance.

Yours sincerely,

Peter Brown, Secretary, Coolum Residents Association

Attached: Letter from Association to the Under-Treasurer dated 12 April 2006